

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

2015 JUN 16 PM 3:21

DEPUTY CLERK

MICHAEL DON DENTON,

Petitioner,

v.

WILLIAM STEPHENS, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,

Respondent.

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2:12-CV-0192

REPORT AND RECOMMENDATION TO
DENY, WITHOUT PREJUDICE, PETITIONER'S MOTION
TO ISSUE THE WRIT OF HABEAS CORPUS

Came for consideration the "Motion to Issue the Writ of Habeas Corpus" filed by petitioner MICHAEL DON DENTON on May 31, 2015, and referred to the undersigned for a Report and Recommendation on June 4, 2015. It is the opinion of the undersigned United States Magistrate Judge that petitioner's motion to issue the writ of habeas corpus should be DENIED without prejudice.

On May 17, 2015, this court entered an order granting petitioner a writ of habeas corpus conditioned on respondent affording petitioner an out of time appeal. The Order provided:

The petition for a writ of habeas corpus is conditionally GRANTED. The Writ of Habeas Corpus vacating petitioner's convictions should issue unless petitioner is afforded an out of time appeal with the assistance of counsel within sixty (60) days from the date of this order.

Petitioner was appointed appellate counsel by the state trial court and petitioner's state court appeals are currently pending before the Court of Appeals for the Seventh District of Texas. *See Denton v. State*, Cause Nos. 07-15-00181-CR and 07-15-00182-CR. The state appellate court has not reached

the merits of the appeals, but has raised the question of jurisdiction. Nonetheless, petitioner is currently being “afforded an out of time appeal with the assistance of counsel.” There has not yet been a violation of this court’s order, and a writ of habeas corpus vacating petitioner’s convictions should not issue at this time. The state appellate court is currently considering its jurisdiction over petitioner’s appeals. If that court determines it does not have appellate jurisdiction and petitioner is not afforded the relief granted by this court, then petitioner may re-file his motion for a writ to issue.

RECOMMENDATION

It is the RECOMMENDATION of the United States Magistrate Judge to the United States District Judge that the “Motion to Issue the Writ of Habeas Corpus” filed by petitioner MICHAEL DON DENTON be DENIED without prejudice.

INSTRUCTIONS FOR SERVICE

The United States District Clerk is directed to send a copy of this Report and Recommendation to each party by the most efficient means available.

IT IS SO RECOMMENDED.

ENTERED this 16th day of June 2015.


CLINTON E. AVERITTE
UNITED STATES MAGISTRATE JUDGE

*** NOTICE OF RIGHT TO OBJECT ***

Any party may object to these proposed findings, conclusions and recommendation. In the event parties wish to object, they are hereby NOTIFIED that the deadline for filing objections is fourteen (14) days from the date of filing as indicated by the “entered” date directly above the signature line. Service is complete upon mailing, Fed. R. Civ. P. 5(b)(2)(C), or transmission by electronic means, Fed. R. Civ. P. 5(b)(2)(E). **Any objections must be filed on or before the fourteenth (14th) day after this recommendation is filed** as indicated by the “entered” date. *See* 28 U.S.C. § 636(b);

Fed. R. Civ. P. 72(b)(2); *see also* Fed. R. Civ. P. 6(d).

Any such objections shall be made in a written pleading entitled “Objections to the Report and Recommendation.” Objecting parties shall file the written objections with the United States District Clerk and serve a copy of such objections on all other parties. A party’s failure to timely file written objections to the proposed findings, conclusions, and recommendation contained in this report shall bar an aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings, legal conclusions, and recommendation set forth by the Magistrate Judge in this report and accepted by the district court. *See Douglass v. United Services Auto. Ass’n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).